

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (CGM) SIPA LIQUIDATION (Substantively Consolidated)
In re BERNARD L. MADOFF, Debtor.	Adv. Pro. No. 10-04468 (CGM)
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. KEN-WEN FAMILY LIMITED PARTNERSHIP; KENNETH W. BROWN, in his capacity as a General Partner of the Ken-Wen Family Limited Partnership; and WENDY BROWN, in her capacity as a General Partner of the Ken-Wen Family Limited Partnership, Defendants.	

**DECLARATION OF MICHAEL S. NEIBURG IN SUPPORT OF TRUSTEE'S
(I) OPPOSITION TO DEFENDANT KENNETH W. BROWN'S MOTION FOR
SUMMARY JUDGMENT, (II) CROSS MOTION FOR SUMMARY JUDGMENT AS
TO DEFENDANT KENNETH W. BROWN AND (III) MOTION FOR SUMMARY
JUDGMENT AS TO DEFENDANT KEN-WEN FAMILY LIMITED PARTNERSHIP**

I, Michael S. Neiburg, declare that I am a Partner at the firm Young Conaway Stargatt &
Taylor, LLP, counsel to Irving H. Picard, as trustee ("Trustee") for the substantively
consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC

(“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–*lll*, and the chapter 7 estate of Bernard L. Madoff. I submit this Declaration in support of the Trustee’s (I) Opposition to Defendant Kenneth W. Brown’s Motion for Summary Judgment, (II) Cross Motion for Summary Judgment as to Defendant Kenneth W. Brown, and (III) Motion for Summary Judgment as to Defendant Ken-Wen Family Limited Partnership.¹

1. Attached hereto as Exhibit 1 is a true and correct copy of the SEC Form BD for Bernard L. Madoff dated December 31, 1959 (PUBLIC0003607-14).

2. Attached hereto as Exhibit 2 is a true and correct copy of Amended Form BD for Bernard L. Madoff Investment Securities LLC dated January 12, 2001.

3. Attached hereto as Exhibit 3 are true and correct excerpts from the testimony of Frank DiPascali, Jr. during the multi-day criminal trial *United States v. Bonventre*, No. 10-CR-228 (LTS) (S.D.N.Y.) (ECF Nos. 858, 862, 884).

4. Attached hereto as Exhibit 4 are true and correct copies of exemplars of JPMorgan Chase Bank, N.A. statements for account #xxxxxx1703 and account #xxxxxxxxx1509 (MADWAA00378499; MADWAA00384184; MADWAA00051674; MADWAA00147886; JPMSAB0000255; JPMSAB0000923; JPMSAB0001568; JPMSAB0002208; JPMSAB0002865; JPMSAB0003510; JPMSAB0004132; MADWAA00378495; MADWAA00377059; MADWAA00377061; MADWAA00051784; MADWAA00147869; JPMTAA0000006; JPMTAA0000043; JPMTAA0000089; JPMTAA0000140; JPMTAA0000179; JPMTAA0000215; JPMTAA0000260).

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Trustee’s Memorandum of Law in Support of (I) Opposition to Defendant Kenneth W. Brown’s Motion for Summary Judgment, (II) Cross Motion for Summary Judgment as to Defendant Kenneth W. Brown, and (III) Motion for Summary Judgment as to Defendant Ken-Wen Family Limited Partnership, filed contemporaneously herewith.

5. Attached hereto as Exhibit 5 is a true and correct copy of the Plea Allocation of Bernard L. Madoff, *United States v. Madoff*, No. 09-CR-213 (DC) (S.D.N.Y. Mar. 12, 2009) (ECF No. 57).

6. Attached hereto as Exhibit 6 is true and correct copy of the Plea Allocation of Frank DiPascali, Jr., *United States v. DiPascali*, No. 09-CR-764 (RJS) (S.D.N.Y. Aug. 11, 2009) (ECF No. 12).

7. Attached hereto as Exhibit 7 is true and correct copy of the Plea Allocation of David L. Kugel, *United States v. Kugel*, No. 10- CR-228 (LTS) (S.D.N.Y. Nov. 21, 2011) (ECF No. 188).

8. Attached hereto as Exhibit 8 is a true and correct copy of the Plea Allocation of Irwin Lipkin, *United States v. Irwin Lipkin*, No. 10-CR-228 (LTS) (S.D.N.Y. Nov. 8, 2012) (ECF No. 288).

9. Attached hereto as Exhibit 9 is a true and correct copy of the Plea Allocation of Eric S. Lipkin, *United States v. Eric S. Lipkin*, No. 10-CR-228 (LTS) (S.D.N.Y. June 6, 2011) (ECF No. 148).

10. Attached hereto as Exhibit 10 is a true and correct copy of the Plea Allocation of Enrica Cotellessa-Pitz, *United States v. Cotellessa-Pitz*, No. 10-CR-228 (LTS) (S.D.N.Y. Dec. 19, 2011) (ECF No. 1512).

11. Attached hereto as Exhibit 11 are true and correct copies of excerpts from Kenneth Brown's deposition taken January 27, 2020.

12. Attached hereto as Exhibit 12 is a true and correct copy of the Ken-Wen Family LP LTD BLMIS Account Record (MADC0559_00000002).²

² For reference, Trustee also attached MADC0559_00000002 to his Amended Complaint as Exhibit B.

13. Attached hereto as Exhibit 13 is a true and correct copy of Ken-Wen Family Limited Partnership's Answers to Trustee's First Set of Requests for Admission by Defendants Ken-Wen Family Limited Partnership, dated June 14, 2018 in the matter styled *Picard v. Ken-Wen Family Limited Partnership et al.*, Adv. Pro. No. 10-04468 (Bankr. S.D.N.Y.).

14. Attached hereto as Exhibit 14 is a true and correct copy of the February 3, 2020 correspondence from counsel for the Trustee to counsel for Mr. Brown, enclosing six (6) expert reports and a production of expert-related documents.

15. Attached hereto as Exhibit 15 is a true and correct copy of Mr. Brown's request for \$150,000 in the June 26 Transfer (AMF00282553).

16. Attached hereto as Exhibit 16 is a true and correct copy of the cancelled check for \$150,000 evidencing the receipt of the June 26 Transfer (MADWAA00273442-43).

17. Attached hereto as Exhibit 17 is a true and correct copy of Mr. Brown's request for \$500,000 in the December 31 Transfer (AMF00282552).

18. Attached hereto as Exhibit 18 is a true and correct copy of the 703 Account's December 2007 bank statement evidencing the receipt of the December 31 Transfer (JPMSAB0003405-56).

19. Attached hereto as Exhibit 19 is a true and correct copy of Mr. Brown's request to liquidate \$3,000,000 in the January 24 Transfer (MADRSS01171666).

20. Attached hereto as Exhibit 20 is a true and correct copy of the 703 Account's January 2008 bank statement evidencing the receipt of the January 24 Transfer (JPMSAB0004132-94).

21. Attached hereto as Exhibit 21 is a true and correct copy of Mr. Brown's request for \$200,000 in the November 17 Transfer (MADTSS01171665).

22. Attached hereto as Exhibit 22 is a true and correct copy of the cancelled check for \$200,000 evidencing the receipt of the November 17 Transfer (MADWAA00285701-02).

23. Attached hereto as Exhibit 23 are true and correct copies of the oral argument transcript from the matters styled *Picard v. Marilyn Bernfeld Tr.*, Adv. Pro. No. 10-05143 (SMB) (Bankr. S.D.N.Y. Oct. 28, 2015) (ECF No. 20), at 114:9–11; *Picard v. Mendelow*, Adv. Pro. No. 10-04283 (SMB) (Bankr. S.D.N.Y. Oct. 28, 2015) (ECF No. 85), at 100:19.

24. Attached hereto as Exhibit 24 are true and correct copies of excerpts from Wendy Werner’s deposition taken February 25, 2020.

25. Attached hereto as Exhibit 25 is a true and correct copy of the *Memorandum Decision Granting Summary Judgment in Favor of Trustee, Determining Funds Held in the Bank Accounts are Customer Property, and Awarding Prejudgment Interest* entered on January 27, 2021 in the matter styled *Picard v. Epstein (In re Madoff Secs.)*, No. 08-01789 (SMB), Adv. No. 10-04438 (CGM), (Docket No. 155).

26. Attached hereto as Exhibit 26 is a true and correct copy of the Collateral Assignment of Life Insurance Policy, dated October 8, 2008 (10-04468_Paradise Bank_00000113-118).

27. Attached hereto as Exhibit 27 is a true and correct copy of the Collateral Assignment of Life Insurance Policy, dated April 27, 2009 (10-04468_Paradise Bank_00000119-126).

28. Attached hereto as Exhibit 28 is a true and correct copy of BLMIS’s Amended and Restated Operating Agreement dated April 14, 2004 (MADTSS01160350-57).

29. Attached hereto as Exhibit 29 is a true and correct copy of BLMIS’s Articles of Organization, dated January 1, 2001 (MADTSS01160346-49).

30. Attached hereto as Exhibit 30 is a true and correct copy of BLMIS's 2006 Form ADV (PUBLIC0003729-62).

31. Attached hereto as Exhibit 31 are true and correct copies of the Madoff Letters to Various Financial Institutions (MADTEE00544720-30; MADTEE00544438; MADTEE00351762; MADTEE00351709-10).

32. Attached hereto as Exhibit 32 is a true and correct copy of a BLMIS Customer Agreement (MADTSS01171735-38).

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing statements are true and correct.

Dated: December 1, 2021

/s/ Michael S. Neiburg
Michael S. Neiburg, Esq.